

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
 NORTHERN INDIANA PUBLIC SERVICE)
 COMPANY)
)
 Petition for Revocation of the Frequency)
 936.7500 MHz licensed to Private Land Mobile)
 Radio Station WPRM224, Chicago, Illinois)
)
 and)
)
 ESP LEASING CORP.)
)
 Licensee of Station WPRM224, Chicago, Illinois)

ORDER PROPOSING MODIFICATION

Adopted: February 7, 2005

Released: February 10, 2005

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* Northern Indiana Public Service Company (NIPSCO) requests that the Commission revoke the above-captioned authorization granted to ESP Leasing Corp. (ESP) for operation on frequency 936.7500 MHz, on the grounds that ESP’s Station WPRM224, Chicago, Illinois, does not afford the required interference protection to NIPSCO’s Station WNVR291, Crown Point, Indiana.¹ For the reasons stated below, we treat NIPSCO’s petition as an informal request for Commission action pursuant to Section 1.41 of the Commission’s Rules,² and initiate a proceeding to modify ESP’s license for Station WPRM224 to delete frequency pair 936/897.7500 MHz.

2. *Background.* NIPSCO is authorized to operate on frequency 936.7500 MHz under Call Sign WNVR291. It is authorized to operate on the associated mobile frequency 897.7500 MHz under Call Sign WPAH495. The license for Station WPAH495 authorizes mobile operations within a 257-kilometer (160 mile) radius around a specific center point, but the license for Station WPAH495 specifies a center point that differs from the coordinates of Station WNVR291’s transmitter.³

3. On February 17, 2004, NIPSCO requested revocation of ESP’s authorization on frequency 936.7500 MHz.⁴ NIPSCO stated that its Station WNVR291 is experiencing harmful interference from

¹ Petition for Revocation (filed Feb. 17, 2004) (Petition).

² 47 C.F.R. § 1.41.

³ The distance between the transmitter for Station WNVR291 and the center point for Station WPAH495 is 65.34 miles (105.15 kilometers).

⁴ *Petition* at 1.

ESP's operations on frequency 936.7500 MHz,⁵ and that ESP's station is short-spaced to Station WNVR291 in violation of Section 90.621(b)(4) of the Commission's Rules.⁶ Because ESP's application⁷ for Station WPRM224 was coordinated by the Personal Communications Industry Association (PCIA),⁸ the Wireless Telecommunications Bureau's Public Safety and Critical Infrastructure Division on July 6, 2004, directed PCIA to provide information on its coordination of ESP's application, and on the coordination of applications for Chicago Messenger Service's Station WNVA726, Chicago, Illinois,⁹ and Veterans Messenger Service's Station WNVA727, Chicago, Illinois,¹⁰ both of which also were authorized¹¹ to operate on frequency pair 936/897.7500 MHz at the same location (the Sears Tower) as Station WPRM224.¹²

4. On August 4, 2004, PCIA responded that, because of the passage of time, it could not determine with certainty why the three stations were short-spaced to Station WNVR291, but suggested that the individual(s) who coordinated the applications may have viewed NIPSCO's Station WNVR291 as a remote or satellite station component of a wide-area system centered around Station WPAH495.¹³ Under those circumstances, the coordinations would have been appropriate because the center point for Station WPAH495 is not short-spaced to the Sears Tower, and remote or satellite stations are licensed on a secondary basis.¹⁴ PCIA stated that it was unable to determine when Station WPAH495 (the mobile frequency) was linked to Station WNVR291 (the base station frequency).¹⁵

5. On November 3, 2004, NIPSCO filed comments on the letter submitted by PCIA.¹⁶ NIPSCO provided copies of its original licensing records to demonstrate that Stations WNVR291 and WPAH495 were linked together from the time of original licensing. It also provided copies of correspondence between its coordinator, the Special Industrial Radio Service Association (now known as the Industrial Telecommunications Association (ITA)), and the National Association of Business and Educational Radio, Inc. (which later merged with, and became known as, PCIA) demonstrating interservice frequency coordination of the NIPSCO stations. NIPSCO asserts that this correspondence shows that PCIA had

⁵ *Id.*

⁶ 47 C.F.R. § 90.621(b)(4). The rule provides that a spacing of at least 113 kilometers be maintained between co-channel stations, but NIPSCO and ESP's base stations are separated by only 56.3 kilometers.

⁷ FCC File No. A061624.

⁸ Frequency Coordination No. 202580505. PCIA is now known as PCIA—The Wireless Infrastructure Association.

⁹ PCIA Frequency Coordination No. 963320056, FCC File No. D064339.

¹⁰ PCIA Frequency Coordination No. 963320057, FCC File No. D064340.

¹¹ The licenses for Stations WNVA726 and WNVA727 subsequently expired without being renewed.

¹² See Letter dated July 6, 2004 from Herbert W. Zeiler, Deputy Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, to PCIA.

¹³ Letter dated Aug. 4, 2004 from Don Andrew, Manager, PCIA Frequency Coordination Services, to Tom Eng, Public Safety and Critical Infrastructure Division, Federal Communications Commission (PCIA Letter).

¹⁴ 47 C.F.R. § 90.631(g).

¹⁵ See PCIA Letter at 2.

¹⁶ NIPSCO Comments on PCIA Letter (filed Nov. 3, 2004).

knowledge that Stations WNVR291 and WPAH495 were linked together when the application for ESP's Station WPRM224 was coordinated.¹⁷

6. Combining the information provided by PCIA and NIPSCO with data in our licensing records, we have determined that the sequence of events regarding licensing of the stations at issue proceeded as follows:

- On June 7, 1991, the Commission licensed Station WNWN286 to Chicago Messenger Service on frequency 936.7500 MHz at coordinates 42-06-20 N./88-22-46 W.
- On August 13, 1992, the Commission licensed Stations WNVR291 and WPAH495 to NIPSCO. At this point, the authorizations did not include frequency pair 936/897.7500 MHz, but the stations were linked.
- On January 7, 1993, ITA submitted modification applications on behalf of NIPSCO to the Commission to add frequency 936.7500 MHz to the license for Station WNVR291 and frequency 897.7500 MHz to the license for Station WPAH495. The applications were granted on June 14, 1993. Station WNVR291 was not short-spaced to Station WNWN286.
- On April 12, 1994, PCIA submitted applications for Veterans Messenger Service and Chicago Messenger Service in Chicago, Illinois for stations located at the Sears Tower.¹⁸ Neither application requested frequency 936.7500 MHz. The applications were granted on October 3, 1994 under Call Signs WNVA726 and WNVA727, respectively.
- On June 2, 1994, PCIA submitted an application for Chicago Messenger Service to modify its license for Station WNWN286 to relocate the transmitter to the Sears Tower.¹⁹ The application was granted on September 27, 1994, resulting in short-spacing relative to Station WNVR291.
- On September 27, 1994, Veterans Messenger Service was granted a license for Station WNWG683, Bensonville, Illinois, which authorized operation on frequency 936.7500 MHz.
- On December 9, 1996, PCIA submitted an application from Chicago Messenger Service to merge the license for Station WNWN286 with the license for Station WNVA727, thereby adding frequency 936.7500 MHz to the Station WNVA727 authorization. On the same date, PCIA also submitted an application from Veterans Messenger Service to merge the license for Station WNWG683 with the license for Station WNVA726, thereby adding frequency 936.7500 MHz to the Station WNVA726 authorization. The applications were granted on April 1, 1997.
- On October 16, 2000, PCIA submitted an application from ESP to operate on frequency 936.7500 MHz, among others, from the Sears Tower.²⁰ ESP stated that the station would use

¹⁷ *Id.* at 5.

¹⁸ PCIA Frequency Coordination No. 940940210, FCC File No. 9404663832; and PCIA Frequency Coordination No. 940940209, FCC File No. 9404663831.

¹⁹ PCIA Frequency Coordination No. 941460058, FCC File No. 9406670150.

²⁰ PCIA Frequency Coordination No. 202580505, FCC File No. A061624.

the existing trunked system operating under Call Sign WNVA727. The application was granted to ESP on November 14, 2000 under Call Sign WPRM224.

7. *Discussion.* We believe that NIPSCO's request is most properly characterized as an informal request for Commission action under Section 1.41 of the Commission's Rules.²¹ It appears that the September 27, 1994 grant of the authorization to relocate Chicago Messenger Service's Station WNWN286 to the Sears Tower was improvident because, due to a faulty coordination, it authorized operation on a previously assigned frequency pair within a 113-kilometer radius. We also conclude that the subsequent authorization of frequency pair 936/897.7500 MHz at the Sears Tower to ESP's Station WPRM224 was likewise improvident due to a defective coordination that resulted in short-spacing relative to NIPSCO's Station WNVR291.

8. We agree with NIPSCO²² that Section 316(a)(1) of the Act provides the appropriate vehicle for resolving this matter.²³ Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.²⁴ We note that the modification of license we propose herein would serve the public interest by preserving the existing coverage areas of affected parties and preventing harmful interference, while not unduly disrupting the operations of ESP, which is currently licensed on several other frequencies. We include the associated mobile frequency 897.7500 MHz in this order because it is assigned with frequency 936.7500 MHz as a pair.²⁵ Thus, we believe that modification of the license for Station WPRM224 to delete frequency pair 936/897.7500 MHz, without providing a replacement frequency, will preserve the existing coverage areas of affected parties, resolve harmful interference to NIPSCO, and prevent further harmful interference, with minimal effect on ESP.

9. In accordance with Section 1.87(a) of the Commission's Rules,²⁶ we will not issue a modification order until ESP has received notice of our proposed action and had an opportunity to file a protest. To do so, ESP must, within thirty days of the release date of this *Order Proposing Modification*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, DC 20554.²⁷ If no protest is filed, ESP will have waived its right to protest the modification and will be deemed to have consented thereto.

10. *Conclusion.* For the reasons stated above, we conclude that the coordination and grant of ESP's application was defective because it authorized operations on frequency pair 936/897.7500 MHz at

²¹ 47 C.F.R. § 1.41.

²² See NIPSCO Comments on PCIA Letter at 5.

²³ 47 U.S.C. § 316(a)(1).

²⁴ *Id.*

²⁵ See 47 C.F.R. § 90.613.

²⁶ 47 C.F.R. § 1.87(a).

²⁷ The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at our new location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

the Sears Tower, resulting in short-spacing with NIPSCO's Station WNVR291. Accordingly, we propose to modify ESP's license for Station WPRM224 to delete frequency pair 936/897.7500 MHz.

11. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the petition to modify the authorization of Station WPRM224, submitted by Northern Indiana Public Service Company on February 17, 2004, treated herein as an informal request for Commission action, IS GRANTED to the extent indicated above and IS OTHERWISE DENIED.

12. IT IS PROPOSED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 316, and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the license for Private Land Mobile Radio Service Station WPRM224, Chicago, Illinois, held by ESP Leasing Corp., BE MODIFIED by deleting frequencies 936.7500 and 897.7500 MHz.

13. IT IS FURTHER ORDERED that this *Order Proposing Modification* shall be sent by certified mail, return receipt requested, to ESP Leasing Corp., 9126 Ogden Ave., Brookfield, Illinois 60513, Attention: Robert Barcal.

14. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau